IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13490 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAIDERBHAI MOHAMMADALI MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13490 of 2004

MS RATNA VORA for Petitioner

MR MHM SHAIKH for Petitioner

MR HM PRACHCHHAK AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 11th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 11th of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that a criminal case came to be registered against the petitioner, under Bombay Prohibition Act, before Prohibition Police Station, Eastern Division, on 8th of August, 2004, whereby it was alleged that the petitioner was found in possession of 384 bottles of foreign liquor and 72 bottles of beer. The detaining authority thoroughly examined the investigation papers in the above said crime registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor. The detaining authority also came to the conclusion that the activities of the petitioner were disturbing to the public order and adversely affecting the public health. The detaining authority reached to the subjective satisfaction that this illegal and anti-social activities of the petitioner were required to be prevented forthwith. The detaining authority after taking into consideration other remedies available against the petitioner in general law, came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act and hence he has passed the order of detention of the petitioner which is under challenge in this petition.

3. Learned Advocate Ms.Ratna Vora for the petitioner and learned AGP Mr.H.M. Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority, as placed on record, was also considered.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue as to whether the detaining authority applied mind properly to the relevant material placed before him.

5. From the grounds of detention placed on record it is clear that the petitioner was in police custody on remand when the order of detention came to be served upon

him. In this respect, in the grounds of detention, the detaining authority came to the conclusion that on remand period being over, the petitioner was likely to move an application for bail. The detaining authority also reached to the subjective satisfaction that the petitioner was likely to be released on bail by competent court on so moving a bail application by him. The detaining authority came to the conclusion that on so releasing the petitioner on bail, the petitioner was likely to be engaged in illegal activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3675, wherein the Apex Court pleased to observe that there must be cogent materials before the Officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available materials on record and must not be the ipse dixit of the Officer passing the order of detention. Likelihood of detenu's moving application for bail, was not held to be cogent material and detention order based on such material was liable to be quashed.

7. In the present case, while going through the papers placed on record from which the detaining authority arrived at subject satisfaction in this respect it is clear that there was no material at all placed before the detaining authority that the petitioner on remand period being over, was likely to move an application for bail. Likewise, there was nothing on record in the shape of material before the detaining authority to draw the inference that on so moving the application for bail, the petitioner was likely to be released on bail. Therefore, the subjective satisfaction of the detaining authority in this respect is based, in fact, on no material at all. The subjective satisfaction, therefore, arrived at by the detaining authority in this respect is not valid, legal or in accordance with law. The order under challenge is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City, on 11th of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner- Haiderbhai Mohammadali Malek is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS

permitted.

(J.R. Vora, J.)

p.n.nair